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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MAC'S MARKET, INC.,

Petitioner,

-vs-

U.S. DEPARTMENT OF JUSTICE,
BUREAU OF ALCOHOL, TOBACCO,
FIREARMS AND EXPLOSIVES

Defendant.

Cause No. _____

**PETITION FOR JUDICIAL
REVIEW**

Mac's Market, Inc. ("Mac's Market") submits this Petition for Judicial Review (the "Petition") pursuant to 18 U.S.C. § 923(f)(3) and 27 C.F.R. § 478.78.

BACKGROUND

In June 2018, the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") and Federal Bureau of Investigations ("FBI") coordinated efforts to investigate Mel Siefke, an individual residing in Libby, Montana and suspected of possessing firearms in violation of 18 U.S.C. § 922(g). That investigation ultimately culminated in an indictment of Mr. Siefke in this Court (CR 18-34-DLC) and a plea of guilty for which Mr. Siefke stands to be sentenced by this Court on Tuesday, February 19, 2019.

Ann Siefke, married to Mr. Siefke, is the independent owner of Mac's Market, a sporting goods and convenience store located in Libby, Montana. Mac's

Market is federally licensed to sell firearms and does sell firearms as part of its business. In fact, the sale of firearms accounts for nearly half of the income of the business as a whole.

As part of the coordinated investigation of Mr. Siefke, the ATF performed an investigation of Mac's Market pursuant to 27 C.F.R. § 478. At the conclusion of that investigation the ATF issued Mac's Market and Ms. Siefke a notice of revocation of her Federal Firearms License and explanation letter describing the alleged violations of the Gun Control Act. The revocation was based on three assertions: (1) a prohibited person violation for "aiding and abetting" Mr. Siefke in his unlawful possession of firearms; (2) a false statement violation asserting Ms. Siefke provided an incorrect acquisition date for a firearm mailed to Mac's Market by a private party, used by a private party, and that was not for sale at the market; and (3) a false statement violation asserting Ms. Siefke did not disclose all of the employees that transferred firearms.

A hearing was timely requested and held at the United States Attorney's Office in Missoula, Montana. At that hearing, Ms. Siefke put on evidence regarding her reasonable belief that Mr. Siefke had his right to possess firearms restored, specifically his word, followed by a background check which Mr. Siefke passed at a local sporting goods store and ultimately a formal background check with the Department of Justice (FBI), none of which indicated Mr. Siefke was a prohibited person. In addition, Ms. Siefke put on evidence related to the allegations of false statement violations.

On December 17, 2018, the ATF issued its Final Notice of Revocation, finding that two of the three violations had merit and dismissing the third allegation of false statements related to employees and transactions. The revocation of the license was to take effect on January 31, 2019. The ATF has graciously extended that time period to allow for this Petition to be filed and for Ms. Siefke and Mac's Market to request a judicial review.

PETITION

1. This Petition requests judicial review of the Final Notice of Revocation of a Federal Firearms License issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) to Mac’s Market on December 17, 2018.

2. Pursuant to 18 U.S.C. § 923(f)(3) and 27 C.F.R. § 478.78:

The aggrieved party may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States District Court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation. In a proceeding conducted under this subsection, the court may consider any evidence submitted by the parties to the proceeding whether or not such evidence was considered at the hearing held under paragraph (2). If the court decides that the Attorney General was not authorized to deny the application or to revoke the license, the court shall order the Attorney General to take such action as may be necessary to comply with the judgment of the court.

3. On or about June 19, 2018, ATF investigators conducted an inspection of Petitioner’s licensed firearms business, Mac’s Market, under the Gun Control Act of 1968, as amended, Title 18, United States Code, Chapter 44 and its implementing regulations, Title 27, Code of Federal Regulations, Part 478.

4. On or about August 24, 2018, the ATF issued a Notice to Revoke or Suspend License and/or Impose a Civil Fine, ATF Form 4500, revoking Petitioner’s Federal Firearm License for alleged willful violations of the Gun Control Act and its implementing regulations, specifically one prohibited person violation and two false statement violations.

5. On September 11, 2018, the Petitioner timely requested a review, via email, to review that Notice.

6. On November 15, 2018, an administrative hearing was held at the U.S. Attorneys Office in Missoula, Montana, to review the Notice revoking Petitioner’s license. Evidence was presented by both the ATF and Ms. Siefke at this hearing.

7. On December 17, 2018, the ATF issued a Final Notice of Denial of Application, Revocation Suspension and/or Fine of Firearms License.

8. The administrative officer did not have reasonable grounds to conclude that the Petitioner had willfully violated 18 U.S.C. § 2(a) and 18 U.S.C. § 923(g)(1) and 27 C.F.R. § 478.32(a)(1) (aiding and abetting a felon in possession of a firearm); or 18 U.S.C. § 922(m) and 27 C.F.R. § 478.128(c) (false statement violation).

9. This Petition is timely filed within 60 days of the Final Notice of Revocation of Federal Firearms License pursuant to 18 U.S.C. § 923(f)(3) and 27 C.F.R. § 478.78.

10. Petitioner resides in Libby, Montana and the principal place of business is in Libby, Montana.

WHEREFORE, Petitioner prays that the Court:

1. Review the revocation issued by ATF to determine whether the Petitioner willfully violated 18 U.S.C. § 2(a), 18 U.S.C. § 923(g)(1) and 27 C.F.R. § 478.32(a)(1);
2. Review the revocation issued by ATF to determine whether the Petitioner willfully violated 18 U.S.C. § 922(m) and 27 C.F.R. § 478.128(c);
3. Set a date for an evidentiary proceeding pursuant to 18 U.S.C. 923(f)(3);
4. Determine that the Attorney General/ATF was not authorized to revoke the Federal Firearms License of Mac's Market;
5. Issue an Order to reinstate the Federal Firearms License of Mac's Market; and
6. For any other relief the Court finds just and reasonable.

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DATED this 13th day of February, 2019.

By: /s/ Dylan McFarland

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Attorneys for Petitioner